

AMENDED IN SENATE JULY 23, 2003

AMENDED IN SENATE JULY 9, 2003

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1059

Introduced by Assembly Member Lieber
(Coauthors: Assembly Members Koretz and Levine)
(Coauthor: Senator Romero)

February 20, 2003

An act to amend Section 1942.5 of, and to add Section ~~1953.5~~ 1940.2 to, the Civil Code, relating to landlord and tenant.

LEGISLATIVE COUNSEL'S DIGEST

AB 1059, as amended, Lieber. Landlord and tenant: *menacing and retaliatory acts*.

(1) *Existing law defines the crime of theft to include the felonious taking of another's personal property, the fraudulent appropriation of another's property held in trust, or defrauding another of money, labor, or property. Existing law defines the crime of extortion as obtaining another's property, with consent, or obtaining an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right.*

This bill would provide that a tenant is entitled to a civil penalty of not more than \$2,000 for each act of a landlord, made for the purpose of influencing the tenant to vacate a dwelling, that constitutes theft or extortion as defined above, or the use of force, threats, or menacing conduct constituting a course of conduct that interferes with the tenant's

right to quiet enjoyment of the premises and that would create an apprehension of harm in a reasonable person.

(2) Existing law provides that a lessor or the agent of a lessor is liable to a lessee for, among other things, punitive damages of not less than \$100 nor more than \$1,000 for specified retaliatory acts where the lessor or agent has been guilty of fraud, oppression, or malice with respect to that act.

This bill would increase the maximum punitive damages allowed from \$1,000 to \$2,000. The bill would also make other technical, nonsubstantive changes.

~~(2) Existing law prohibits a landlord from retaliating against a tenant because the tenant has exercised specified rights, such as a complaint regarding the tenantability of a dwelling. Existing law provides that a landlord in a rent control jurisdiction who evicts a tenant based on a fraudulent intention to occupy the tenant's unit may be liable for treble damages.~~

~~This bill would make it unlawful for a landlord or the landlord's agent, assignee, representative, or manager to use fraud, intimidation, or coercion to influence a tenant to vacate a rental dwelling. The bill would provide that a tenant prevailing in an action to enforce these rights is entitled to an award not to exceed \$2,000 for each violation, and would permit a court to award attorney's fees to a prevailing party.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 1940.2 is added to the Civil Code, to*
2 *read:*

3 1940.2 (a) *It is unlawful for a landlord to do any of the*
4 *following for the purpose of influencing a tenant to vacate a*
5 *dwelling:*

6 (1) *Engage in conduct that violates subdivision (a) of Section*
7 *484 of the Penal Code.*

8 (2) *Engage in conduct that violates Section 518 of the Penal*
9 *Code.*

10 (3) *Use force, threats, or menacing conduct constituting a*
11 *course of conduct that interferes with the tenant's quiet enjoyment*
12 *of the premises in violation of Section 1927 and that would create*
13 *an apprehension of harm in a reasonable person. An oral or*

1 *written warning notice regarding actual conduct by a tenant,*
2 *occupant, or guest that violates the applicable rules, regulations,*
3 *lease, or laws, is not a violation of this paragraph. Nothing in this*
4 *paragraph requires a tenant to be actually or constructively*
5 *evicted in order to obtain relief.*

6 (4) *Commit a significant and intentional violation of Section*
7 *1954, or engages in a course of conduct that violates Section 1954.*

8 (b) *A tenant who prevails in a civil action, including an action*
9 *in small claims court, to enforce his or her rights under this section*
10 *is entitled to a civil penalty in an amount not to exceed two*
11 *thousand dollars (\$2,000) for each violation.*

12 SEC. 2. Section 1942.5 of the Civil Code is amended to read:

13 1942.5. (a) If the lessor retaliates against the lessee because
14 of the exercise by the lessee of his rights under this chapter or
15 because of his complaint to an appropriate agency as to
16 tenantability of a dwelling, and if the lessee of a dwelling is not in
17 default as to the payment of his rent, the lessor may not recover
18 possession of a dwelling in any action or proceeding, cause the
19 lessee to quit involuntarily, increase the rent, or decrease any
20 services within 180 days of any of the following:

21 (1) After the date upon which the lessee, in good faith, has
22 given notice pursuant to Section 1942, or has made an oral
23 complaint to the lessor regarding tenantability.

24 (2) After the date upon which the lessee, in good faith, has filed
25 a written complaint, or an oral complaint which is registered or
26 otherwise recorded in writing, with an appropriate agency, of
27 which the lessor has notice, for the purpose of obtaining correction
28 of a condition relating to tenantability.

29 (3) After the date of an inspection or issuance of a citation,
30 resulting from a complaint described in paragraph (2) of which the
31 lessor did not have notice.

32 (4) After the filing of appropriate documents commencing a
33 judicial or arbitration proceeding involving the issue of
34 tenantability.

35 (5) After entry of judgment or the signing of an arbitration
36 award, if any, when in the judicial proceeding or arbitration the
37 issue of tenantability is determined adversely to the lessor.

38 In each instance, the 180-day period shall run from the latest
39 applicable date referred to in paragraphs (1) to (5), inclusive.

1 (b) A lessee may not invoke subdivision (a) more than once in
2 any 12-month period.

3 (c) It is unlawful for a lessor to increase rent, decrease services,
4 cause a lessee to quit involuntarily, bring an action to recover
5 possession, or threaten to do any of those acts, for the purpose of
6 retaliating against the lessee because he or she has lawfully
7 organized or participated in a lessees' association or an
8 organization advocating lessees' rights or has lawfully and
9 peaceably exercised any rights under the law. In an action brought
10 by or against the lessee pursuant to this subdivision, the lessee shall
11 bear the burden of producing evidence that the lessor's conduct
12 was, in fact, retaliatory.

13 (d) Nothing in this section shall be construed as limiting in any
14 way the exercise by the lessor of his or her rights under any lease
15 or agreement or any law pertaining to the hiring of property or his
16 or her right to do any of the acts described in subdivision (a) or (c)
17 for any lawful cause. Any waiver by a lessee of his or her rights
18 under this section is void as contrary to public policy.

19 (e) Notwithstanding subdivisions (a) to (d), inclusive, a lessor
20 may recover possession of a dwelling and do any of the other acts
21 described in subdivision (a) within the period or periods
22 prescribed therein, or within subdivision (c), if the notice of
23 termination, rent increase, or other act, and any pleading or
24 statement of issues in an arbitration, if any, states the ground upon
25 which the lessor, in good faith, seeks to recover possession,
26 increase rent, or do any of the other acts described in subdivision
27 (a) or (c). If the statement is controverted, the lessor shall establish
28 its truth at the trial or other hearing.

29 (f) Any lessor or agent of a lessor who violates this section shall
30 be liable to the lessee in a civil action for all of the following:

31 (1) The actual damages sustained by the lessee.

32 (2) Punitive damages in an amount of not less than one hundred
33 dollars (\$100) nor more than two thousand dollars (\$2,000) for
34 each retaliatory act where the lessor or agent has been guilty of
35 fraud, oppression, or malice with respect to that act.

36 (g) In any action brought for damages for retaliatory eviction,
37 the court shall award reasonable attorney's fees to the prevailing
38 party if either party requests attorney's fees upon the initiation of
39 the action.

(h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

~~SEC. 2. Section 1953.5 is added to the Civil Code, to read:~~

~~1953.5. (a) It is unlawful for a lessor, or the lessor's agent, assignee, representative, or manager to use fraud, intimidation, or coercion to influence a tenant to vacate a rental dwelling unit.~~

~~(b) A tenant that prevails in a civil action, including an action in small claims court, to enforce his or her rights under this section is entitled to an award in an amount not to exceed two thousand dollars (\$2,000) for each violation.~~

~~(c) In any action brought to enforce this section, the court may award reasonable attorney's fees to the prevailing party, if either party requests attorney's fees upon the initiation of the action.~~

~~(d) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.~~

